

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-216
Hawaii Administrative Rules

August 18, 2003

SUMMARY

1. §11-216-2 is amended.
2. §11-216-4 is amended.
3. A new §11-216-4.5 is added.
4. §11-216-19 is amended.
5. §11-216-40 is repealed.
6. Chapter 216 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

DISABILITY AND COMMUNICATION ACCESS BOARD

CHAPTER 216

DISABILITY AND COMMUNICATION ACCESS BOARD
RULES OF PRACTICE AND PROCEDURES

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§11-216-41 Section 504 of the Rehabilitation Act of
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SUBCHAPTER 1

GENERAL PROVISIONS

§11-216-1 Purpose and scope. The purpose of this chapter is to establish rules of practice and procedures which shall govern procedures for the Disability and Communication Access Board in reviewing construction documents in accordance with section 103-50, HRS; in performing building and facility site surveys to identify architectural barriers; and in reviewing construction documents that are subject to other laws and standards. [Eff 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-2 Definitions. As used in this chapter, unless the context requires otherwise:

"Accessible" means a site, building, facility, or portion thereof that complies with the accessibility guidelines and that can be approached, entered, and used by persons with disabilities;

"Accessible route" means a continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts;

"ADAAG" means the Americans with Disabilities Act Accessibility Guidelines, 36 CFR Part 1191, as amended;

"Addition" means an expansion, extension, or

increase in the gross floor area of a building or facility;

"Alteration" means a change or rearrangement to the structural parts or elements of a building, facility, site, including pedestrian facilities in the public right-of-way that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, and changes or rearrangement in the plan configuration of walls and full-height partitions, or pedestrian elements or surfaces in a developed right-of-way;

"Barrier removal" means the removal, rearrangement, restructuring, alteration, or addition, of any element or space of a building or facility to make it usable by persons with disabilities;

"Building" means any structure used and intended for supporting or sheltering any use or occupancy;

"Board" means the disability and communication access board;

"Circulation path" means an exterior or interior way of passage provided for pedestrian travel, including, but not limited to, walks, hallways, courtyards, elevators, platform lifts, ramps, stairways, and landings;

"Construction" means all the on-site and off-site work done to build, add, alter, or maintain structures, from land clearance through completion, including excavation, erection, utilities, streets, walkways, and the assembly and installation of components and equipment;

"Construction document" means plan, specifications, addenda, modifications or changes, and other documents for the construction of a building or facility including preliminary, prefinal, and final versions of these documents;

"Covered multifamily dwellings" means buildings consisting of four or more dwelling units if such buildings have one or more elevators, and ground floor dwelling units in other buildings consisting of four or more dwelling units. Dwelling units within a single structure separated by firewalls do not constitute separate buildings;

"Document review" means a review of the construction documents to verify compliance with the accessibility guidelines and issuance of a written report listing items that do not conform to the accessibility guidelines;

"Element" means an architectural or mechanical component of a building, facility, space, or site;

"Facility" means all or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site;

"Fair Housing Amendments Act Accessibility Guidelines" means federal design guidelines used to implement the accessibility requirements of the Fair Housing Act of 1988, 24 CFR parts 100.200-100.205;

"Interpretive opinion" means a determination as to the applicability or non-applicability with respect to a factual situation of any guideline of the disability and communication access board or of a statute which the disability and communication access board is required to administer, as determined by the disability and communication access board pursuant to section 103-50, HRS;

"Maximum extent feasible" means the occasional case where the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In the occasional case where full compliance is impossible, alterations shall provide the maximum physical accessibility feasible;

"Party" means each person admitted as a participant, or properly seeking and entitled to be admitted as a participant in any committee proceeding;

"Person" means an individual, a private or public organization of any character, a trust or estate, a society or firm, an assembly, a partnership, a corporation, a professional corporation, an association, the State, any political subdivision of the State, a county, a State agency or any instrumentality of a county;

"Primary function" means a functional space or rooms and spaces in a building that house the major activities for which the building is intended. Areas that contain a primary function include, but are not limited to, a customer services lobby, the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and all other work areas in which activities of the personnel using the facility are carried out. Areas such as mechanical rooms, boiler rooms, supply storage rooms, employee lounges and locker rooms, janitorial closets, entrances, corridors, and restrooms are not areas containing a primary function;

"Public buildings, facilities, and sites" means buildings, facilities, and sites that:

- (1) Are designed, constructed, purchased, or leased with the use of any federal, state, or county funds;
- (2) House state or county programs, services, or activities that are intended to be accessed by the general public; or
- (3) Are constructed on state or county lands or lands that will be transferred to the state or county;

"Public use" means interior or exterior rooms, spaces, or elements that are made available to the public. Public use may be provided at a building or facility that is privately or publicly owned;

"Repair and maintenance" means preventative and routine upkeep, and/or preservation or restoration of an existing element, space, building, or facility. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility;

"Resubmittal" means plans, specifications, addenda, modifications or changes, and other documentation submitted as a reply to the original document review;

"Site" means a parcel of land bounded by a property line or a designated portion of a public right-of-way;

"Site specific alternate design" means a relief from specific requirements of section 103-50, HRS, as determined by the disability and communication access board pursuant to section 103-50, HRS, when the site specific alternate design will ensure an alternate design that provides equal or greater access for persons with disabilities;

"Space" means a definable area, such as a room, toilet room, hall, assembly area, entrance, storage room, alcove, courtyard, or lobby;

"Structural impracticability" means the unique characteristics of terrain which prevent the full incorporation of accessibility features in a building or facility;

"Technical infeasibility", as defined in the accessibility design guidelines, means with respect to an alteration of a building or a facility, that it has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other existing physical or

site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility. [Eff 9/5/00; am and comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-3 Disability and communication access board. (a) The principal office of the board is at Honolulu, Hawaii. All communications applicable to this chapter shall be addressed to the board, Honolulu, Hawaii, unless otherwise specifically directed.

(b) For purposes of this chapter, the regular office hours of the board shall be from 7:45 a.m. to 4:30 p.m., Monday through Friday, inclusive, except holidays, unless otherwise provided by statute or executive order.

(c) All documents required to be submitted herein shall be filed with the office of the board at Honolulu, Hawaii, unless specifically directed otherwise. [Eff 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-4 Requirements for accessibility to public buildings, facilities, and sites - general. (a) The construction of all public buildings, facilities, and sites by the State or county or on behalf of the State or any county subject to this chapter, shall be prepared so the buildings, facilities, and sites are readily accessible to and usable by persons with disabilities.

(b) Readily accessible to and usable by people with disabilities means compliance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG), and the Fair Housing Amendments Act Accessibility Guidelines, as adopted and amended by the disability and communication access board. [Eff 9/5/00; am and comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-4.5 Requirements for accessibility to multifamily dwelling units required by the Fair Housing

Amendments Act. (a) These design guidelines apply to the design and construction requirements of 24 CFR part 100.205. Compliance with these guidelines do not relieve persons from complying with design requirements of the Americans with Disabilities Act Accessibility Guidelines (ADAAG), or residential housing guidelines as adopted and amended by the disability and communication access board.

- (b) All covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that:
 - (1) The public and common use areas are readily accessible to and usable by persons with disabilities;
 - (2) All doors designed to allow passage into and within all premises are sufficiently wide to allow passage by persons with disabilities in wheelchairs; and
 - (3) All premises within covered multifamily dwelling units contain the following features of design:
 - (A) An accessible route into and through the covered dwelling unit;
 - (B) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - (C) Reinforcement in bathroom walls to allow later installation of grab bars around a toilet, tub, shower, and stall and shower seat, where such facilities are provided; and
 - (D) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. [Eff and comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-5 Requirements for accessibility to public buildings, facilities, and sites - new construction.

(a) All areas of newly designed or newly constructed public buildings, facilities, and sites shall comply with this chapter.

(b) Where a public building, facility, or site contains more than one use, each portion shall comply with the applicable requirements for that use.

(c) Full compliance with the requirements of this chapter is not required when an entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

(d) If providing accessibility in conformance with this section would be structurally impracticable, any portion of the public building, facility or site that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.
[Eff 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-6 Requirements for accessibility to public buildings, facilities, and sites - alterations. (a) Additions and alterations to existing public buildings, facilities, and sites, including qualified historic public buildings, facilities, and sites, shall comply with this chapter.

(b) Any alteration of a public building, facility, or site shall be designed and constructed so as to ensure that, to the maximum extent feasible, the altered portions are readily accessible to and usable by individuals with disabilities. Alterations do not include ordinary repair and maintenance, unless they affect the usability of a public building, facility, or site.

(c) In alterations, where compliance with applicable provisions is technically infeasible, the alteration shall provide accessibility to the maximum extent feasible. Any element or space of a public building, facility, or site that is being altered and can be made accessible shall be made accessible within the scope of the alteration.

(d) An alteration that decreases or has the effect of decreasing the accessibility of a public building, facility, or site below the requirements for new construction at the time of alteration is prohibited.

(e) An alteration of an existing element, space, or area of a public building, facility, or site shall not impose a requirement for greater accessibility than that which would be required for new construction.
[Eff 9/5/00; comp 9/20/03] (Auth: [HRS §348F-6) (Imp: HRS §103-50)

§11-216-7 Coordination with other agencies. (a) All departments or agencies of the state or county shall seek the advice and recommendations from the disability and communication access board on all construction documents to ensure conformance with the accessibility guidelines as required by this chapter.

(b) Each state or county department or agency shall submit the latest construction documents which have been produced to the board for review.

(c) A transmittal of the construction documents shall contain, at a minimum, project name, project number (if assigned), name of project coordinator, project consultant, and department or agency responsible for the project.

(d) When submitting construction documents, the department or agency shall identify the project phase and type. Project phase shall be noted as, but not limited to, preliminary, prefinal, or final. Project type shall be noted as, but not limited to, new construction, alteration, addition, or a barrier removal project. [Eff 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-8 Public information. (a) Unless otherwise provided for by statute, these rules, or order of the board members, all information contained in any submittal, petition, statement, recommendation, report, map, brief memorandum or other document filed with the board shall be available for inspection by the public after a written report has been issued.

(b) When permitted or authorized by the board, matters of public record may be inspected in the offices of the board in Honolulu during regular office hours. [Eff 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-9 Severability. If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remaining portion of these rules or the application thereof to any person or circumstance shall not be affected. [Eff 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§§11-216-10 to 11-216-14 (Reserved)

SUBCHAPTER 2

PROCEDURES FOR REVIEW OF DOCUMENTS

§11-216-15 Filing of documents. (a) All construction documents submitted to the board for review shall be filed at the board office during regular office hours. Construction documents may be sent by mail or hand-carried to the board in Honolulu, Hawaii.

(b) All construction documents filed with the board shall be a full set unless otherwise directed by the board. Plans shall be accompanied by one set of specifications if provided with the project.

(c) The transmittal or cover letter that accompanies the final construction documents submitted for review shall be signed in indelible ink by the project manager having jurisdiction over the project. The signature of the person signing the document indicates that the person has read or reviewed the construction documents; that to the best to his or her knowledge, every statement contained in the documents, and any subsequent documents to be submitted for review are true; and that no such statements are misleading.

(d) Every document filed by any person or office with the board shall state on the transmittal or cover letter the name and mailing address of the department or agency and the name of the person who is requesting a document review from the board.

(e) Construction documents received by the board shall be date-stamped by the board staff.
[Eff 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-16 Review of documents. The board staff shall review all construction documents filed with the board for each project subject to section 103-50, HRS, and shall prepare a written report listing items in the construction documents that do not conform to the accessibility guidelines.
[Eff 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-17 Requests for approval of site specific alternate design. (a) If an applicant submits a design that departs from the minimum requirements for accessibility as specified in the accessibility guidelines, the submitted design shall provide equal or greater accessibility. As required by chapter 11-217, HAR, an applicant shall submit in writing a request for approval of a site specific alternate design to the board for any design that the applicant claims will provide equal or greater accessibility than that provided by the accessibility guidelines. The board may approve or disapprove the request for a site specific alternate design for any design that departs from the minimum requirements for accessibility and is claimed will provide equal or greater accessibility.

(b) The board staff may provide comments to a site specific alternate design request during public hearings held by board.

(c) Any final decision made by the board concerning a site specific alternate design shall be binding upon all subsequent document reviews.
[Eff 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-18 Requests for interpretive opinion. (a) If, during document review the applicant or board staff finds that a clarification of a portion of the accessibility guidelines is necessary, the applicant or board staff shall submit in writing a request for an interpretive opinion to the board as required by chapter 11-217, HAR.

(b) Any final decision made by the board concerning an interpretive opinion shall be binding upon all subsequent document reviews.

[Eff 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-19 Written report. (a) The staff shall forward the original document review report with the project's construction documents to the department or agency project manager or design consultant that originated the submittal.

(b) The written report shall list the title and date of the construction plan, specification, or other

documents which were analyzed for the report. The written report shall indicate all discrepancies on the construction documents that does not appear to meet the minimum requirements for accessibility.

(c) Resubmittals to the board office for review shall include construction documents that reflect all changes, amendments, and other substantiating evidence on the plans and specifications that indicate all discrepancies have been addressed. The staff shall prepare a updated written report upon resubmission of construction documents.

(d) Construction documents that show no discrepancies to the accessibility guidelines shall be indicated as such in the written report with a statement indicating that the documents reviewed appear to meet all accessibility requirements as noted. The state or county department or agency overseeing the project shall be responsible for compliance with the document review report.

(e) Construction documents, which indicate that accessibility guidelines do not apply, shall be returned indicating this in the document review report.

(f) A statement from the department and project consultant shall substantiate document review reports in which technical infeasibility, structural impracticability, or historic preservation may apply. The statement shall indicate why conformance with the requirements for accessibility is technically infeasible, structurally impracticable, or historic. Both the design consultant and the department or agency director or their designees shall sign the substantiating statement.

(g) Written reports shall contain the date of review and the signature of the board staff member who reviewed the construction documents. [Eff 9/5/00; am and comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-20 Retention of documents by board. (a) All written documentation filed with or presented to the board regarding a specific project shall be retained in the files of the board until the board orders otherwise.

(b) Documentation shall include, but is not limited to, written reports, site survey reports, technical assistance, and other correspondence, and shall, over a period of time, reflect all significant

interactions, decisions, opinions, and meetings between the board and all relevant parties concerning a specific project. [Eff 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§§11-216-21 to 11-216-28 (Reserved)

SUBCHAPTER 3

PROCEDURES FOR SITE SURVEYS FOR ARCHITECTURAL BARRIER REMOVAL

§11-216-29 Requests for surveys. (a) Any request for a site survey by the board shall be filed with the board and shall state on the first page of the request the name and mailing address of the department or agency and the name of the person requesting the site survey. The name of the department or agency project manager or individual responsible for the survey assessment shall be listed.

(b) The survey request shall specify the type of facility, the approximate year built, whether the building is listed in a national or state historic register, and any other pertinent information that will help the board assess the present status or condition of the building or facility. The request shall also indicate the intended scope of work of the site survey. [Eff 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-30 Conducting survey; documentation. (a) The department or agency representative responsible for the project shall accompany the board staff on the survey and shall be responsible for documenting the survey.

(b) The board staff shall review the completed survey documentation for accuracy and prepare a written reply to the requesting party. The nature of the reply and the extent of any comments will vary depending on the scope or purpose of the survey. The reply shall contain the signature of the board staff that accompanied the representative on the project survey.

(c) The board staff shall forward the original review and comment reply, and a copy of all other pertinent documentation to the department or agency that conducted and documented the site survey. [Eff 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-31 Filing of documents. The board shall file a copy of the written reply and all documentation gathered on the site survey review in the files of the board. The files shall also contain minutes of all meetings, correspondence, all significant interactions, and technical assistance between the board and all parties concerning a specific project. [Eff 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§§11-216-32 to 11-216-39 (Reserved)

SUBCHAPTER 4

PROCEDURES FOR PROJECTS SUBJECT TO OTHER LAWS

§11-216-40 Repealed. [R 9/20/03]

§11-216-41 Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794. (a) The board shall review every facility with the understanding that all places are potentially sites for occupancy by a person with a physical disability. Board staff shall inform the project manager or architect that any decision to make program modifications in lieu of architectural or structural modifications in pre-1977 buildings and facilities should be noted appropriately in the department's or agency's reply to the document review report.

(b) The board shall emphasize that the determination of modification requirements shall be made by the department or agency operating the program or providing the services and that matters concerning

programmatical issues should come from that department or agency.

(c) The board will not accept or reject the department's or agency's explanation or programmatic decision; however, such an explanation will be construed and documented as the department's or agency's rationale in the event future questions arise as to why a specific element or area of a building was not made physically accessible.

(d) The responsibility to respond to architectural discrepancies in the form of a written reply to a document review report shall rest with the state or county department or agency overseeing the project.
[Eff 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

DEPARTMENT OF HEALTH

The repeal of section 11-216-40, and amendments to and compilation of chapter 216, title 11, Hawaii Administrative Rules, on the Summary Page dated August 18, 2003, were adopted on September 20, 2003, following a public hearing held on May 15, 2003, after public notice was given in the Honolulu Star-Bulletin, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island on April 14, 2003.

The repeal and amendments to chapter 11-216 shall take effect ten days after filing with the Office of the Lieutenant Governor.

CHIYOME L. FUKINO, M.D.
Director of Health

LINDA LINGLE
Governor
State of Hawaii

Date: September 9, 2003

September 10, 2003
Filed

APPROVED AS TO FORM:

Michelle E. Nakata
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